

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY SANDERS,

Petitioner,

v.

COUNTY OF KERN, ET AL.,

Defendants.

Case No. 1:22-cv-01029-CDB

**ORDER DIRECTING THE CLERK OF
COURT TO CLOSE THIS CASE
PURSUANT TO FED. R. CIV. P.
41(a)(1)(A)(i)**

(ECF No. 9)

Plaintiff filed his complaint on August 15, 2022. (ECF No. 1.) On October 27, 2022, the Court issued an Order to Show Cause as to why sanctions should not issue for Plaintiff's failure to prosecute this action and serve the summons and complaint in a timely fashion. (ECF No. 7.) In his response, Counsel for Plaintiff declared that he intended to file a First Amended Complaint but could not do so as one of his attorneys was sick and needed additional time to prepare. Counsel for Plaintiff further attested that if the Court was disinclined to grant his request, then, he alternatively requested that this action be dismissed without prejudice. (ECF No. 8) The Court found a showing of good cause and ordered Plaintiff to file an amended complaint no later than December 9, 2022. (ECF No. 9)

After the expiration of the Court-ordered time to file an amended complaint, on December 12, 2022, Madelyn Viramontes, a representative of Counsel for Plaintiff's law firm transmitted an *ex parte* email communication to the Courtroom Deputy Clerk in which she explained Counsel

1 was unable to comply with the Court-ordered filing deadline due to illness. The representative
2 also stated in her email to the Court that Counsel for Plaintiff intended to dismiss this action
3 without prejudice.

4 A plaintiff may dismiss an action pursuant to Rule 41(a)(1)(A)(i), Fed. R. Civ. P., without
5 a court order by filing a request before the opposing party files a responsive pleading. Here, no
6 defendant has answered or appeared and, accordingly, dismissal is proper. The Court construes
7 the email of Ms. Viramontes, attached hereto as Exhibit A, as Plaintiff's notice of dismissal.
8 Once a dismissal under Rule 41(a)(1) is properly filed, no order of the court is necessary to
9 effectuate dismissal; the dismissal is effective automatically. *See Com. Space Mgmt. Co. v.*
10 *Boeing Co.*, 193 F.3d 1074, 1078 (9th Cir. 1999).

11 The Court DIRECTS the Clerk of the Court to close this case and to terminate the
12 Scheduling Conference. (ECF Nos. 7).

13 IT IS SO ORDERED.

14
15 Dated: **December 12, 2022**


UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

From: Madelyn Viramontes
Sent: Monday, December 12, 2022 8:59 AM
To: Susan Hall
Cc: Brian Dunn Timaiah Smith
Subject: 1:22-cv-01029-CDB:Amended Complaint Re OSC

CAUTION - EXTERNAL:

Ms. Hall,

Goodmorning. Mr. Dunn has been out of the office and was not able to file the Amended Complaint due by December 9th Re: Plaintiff's OSC response on 10/27/2022.

When Mr. Dunn is well, he plans to move to have the Complaint dismissed without prejudice.

Thanks.

Madelyn Viramontes
*Legal Assistant to Brian T. Dunn, Esq.,
Timaiah N. Smith, MBA, Esq., and
Edward M. Lyman III, Esq.*

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